

§ 516.63

(a) Discuss the status of significant procurement fraud or corruption investigations being conducted by USACIDC and possible remedies. These discussions should take place on a regular basis.

(b) Discuss the coordination of possible criminal, civil, contractual, or administrative remedies with prosecutive authorities.

(c) PFD will maintain liaison with other DOD centralized organizations and will coordinate remedies with those centralized organizations affected by a significant investigation of fraud or corruption that relates to DOD procurement activities.

(d) Ascertain the effect on any ongoing investigation of the initiation of civil, contractual, or administrative remedies as follows:

(1) PFD will maintain liaison with USACIDC and other DOD criminal investigative organizations in order to determine the advisability of initiating any civil, contractual, or administrative actions.

(2) USACIDC will advise PFD of any adverse effect on an investigation or prosecution by the initiation of civil, contractual, or administrative actions.

§ 516.63 Coordination with DOJ.

(a) PFD will establish and maintain liaison with DOJ and the Defense Procurement Fraud Unit on significant fraud and corruption cases to accomplish the following:

(1) Monitor criminal prosecutions.

(2) Initiate litigation for civil recovery.

(3) Coordinate administrative or contractual actions while criminal or civil proceedings are pending.

(4) Coordinate settlement agreements or proposed settlements of criminal, civil, and administrative actions.

(5) Respond to DOJ requests for information and assistance.

(b) In cases where there is an ongoing criminal investigation, coordination with DOJ by any member of the Army normally will be accomplished by or through USACIDC or the cognizant DOD criminal investigative organization, or with the investigative organization's advance knowledge. This does not apply to the routine exchange of information between government at-

32 CFR Ch. V (7-1-09 Edition)

torneys in the course of civil litigation or the routine referral of cases to DOJ for civil recovery.

(c) Initial contact by any attorney associated with the U.S. Army with a U.S. Attorney's office or DOJ, whether initiated by the Army attorney or not, will be reported to PFD. Activity after the initial contact will only be reported to PFD when the Army attorney feels there has been a significant event in the case. If the Army attorney is not a PFI Coordinator or a PFA, the matter should be referred to one of these two attorneys as soon as possible. Routine exchanges between Army attorneys and U.S. Attorney's offices or DOJ do not need to be brought to the attention of PFD.

§ 516.64 Comprehensive remedies plan.

(a) A specific, comprehensive remedies plan will be developed in each significant investigation involving fraud or corruption that relates to Army procurement activities. When possible, these plans should be forwarded with the DFARS 209.406-3 reports. In no case, however, should the report be delayed an appreciable time pending completion of the plan. The format for a remedies plan is at figure H-2, appendix G, to this part.

(b) The plan will be developed initially by the PFA with the participation of the appropriate criminal investigators and other relevant personnel such as the contracting officer. In significant cases the PFA should also coordinate a remedies plan early with PFD. Defective product/product substitution remedies plans must comply with the requirements of appendix D to this part.

(c) A comprehensive remedies plan will include at a minimum the following information and considerations:

(1) Summary of allegations and investigative results.

(2) Statement of any adverse impact on a DOD mission. DOD investigative organizations, commanders, or procurement officials will also provide this information to prosecutive authorities to enhance prosecution of offenses or to prepare a victim impact statement pursuant to Fed. R. Crim. P. 32(c)(2).

Department of the Army, DoD

§516.66

(3) The impact upon combat readiness and safety.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress, or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DOD criminal investigative organization involved.

(e) Testing necessary to support the investigation and remedies plan should comply with figure H-3, appendix G, to this part.

§516.65 Litigation reports in civil recovery cases.

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

- (1) False Claims Act, 31 USC 3729.
- (2) Anti-Kickback Act, 41 USC 51.
- (3) Sherman Act, 15 USC 1-7.
- (4) Racketeer Influenced and Corrupt Organizations Act, 18 USC 1961-1968.
- (5) Common law fraud.
- (6) Unjust enrichment.
- (7) Constructive trust.

(8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 USC 218. See *K&R Engineering Co. v. United States*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, PFD should be consulted to determine if a litigation report is necessary. If requested by PFD, the report should summarize the available evidence and applicable theories of recovery and be prepared under §516.23 of this part. To avoid unnecessary duplication of effort, recovery reports may include and make liberal references to other reports previously prepared on a given case such as the DFARS 209.406-3 (48 CFR 209.406-3) report.

(d) The MACOM PFI coordinator and PFA will monitor all civil fraud recovery

efforts throughout the command and will provide training and technical assistance as required. Status reports of all civil fraud recovery efforts will be provided through channels as required by PFD.

§516.66 Administrative and contractual actions.

(a) The following remedial options should be considered in response to confirmed fraudulent activity:

- (1) Contractual.
 - (i) Termination of contract for default.
 - (ii) Nonaward of contract based upon a finding of contractor nonresponsibility. (If this appears to be a valid option, a DFARS 209.406-3 (48 CFR 209.406-3) report must be prepared where contractor nonresponsibility is based on lack of integrity).
 - (iii) Rescission of contract.
 - (iv) Revocation of acceptance.
 - (v) Use of contract warranties.
 - (vi) Withholding of payments to contractor. In the case of withholding pursuant to DFARS 2032.173, the Chief, PFD, is the Army Remedy Coordinating Official.
 - (vii) Offset of payments due to contractor from other contracts.
 - (viii) Revocation of facility security clearances.
 - (ix) Increased level of quality assurance.
 - (x) Refusal to accept nonconforming goods.
 - (xi) Denial of claims submitted by contractors.
 - (xii) Removal of contract from automated solicitation or payment system.
- (2) Administrative.
 - (i) Change in contracting forms and procedures.
 - (ii) Removal or reassignment of government personnel.
 - (iii) Review of contract administration and payment controls.
 - (iv) Revocation of warrant of contracting officer.
 - (v) Suspension of contractor.
 - (vi) Debarment of contractor.
- (b) In cases which are pending review or action by DOJ, PFAs should coordinate with the DOJ attorney handling the case prior to initiating any contractual or administrative remedy. In